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Diplomacy at Sea

U.S. Freedom of Navigation Operations in the Black Sea

William J. Aceves

ON 12 FEBRUARY 1988 THE COMMANDER IN CHIEF of United States naval forces in Europe (CincUsNavEur) received the following message from the USS *Yorktown*. At the time, the *Yorktown* and the USS *Caron* were conducting Freedom of Navigation operations in the Black Sea off the Crimean coast of the Soviet Union. "While conducting innocent passage south of Crimean Peninsula *Yorktown* was deliberately shouldered by Soviet Krivak I FFG-0811 (*Bezzavetnyi*). Minor damage sustained to hull, no holing or risk of flooding. Two Harpoon missiles on port fantail launcher are damaged and unusable. CasRep [casualty report] follows. Amplifying info to follow."¹

The *Caron* transmitted the following account of the incident to CincUsNavEur: "IncSea [incident at sea] violation. Mirka class FFL hull number 824 collided with *Caron* port side aft with no damage to ship or personnel at 0801Z [10:01 A.M. local]. Prior to collision, Mirka passed to *Caron* on channel 16 VHF [very-high-frequency voice radio] 'Do not violate state borders of the Soviet Union, I am authorized to strike.' USS *Yorktown* in company received similar warnings and has been struck by Stenka class patrol boat. Indications are that either or both units may be rammed again. *Caron* will maneuver to attempt to avoid further damage while maintaining Freedom of Navigation track."²

While neither U.S. vessel was severely damaged, the incident graphically displayed the dangers to American warships involved in those years in the U.S. Freedom of Navigation (FON) program. More importantly, it raised a variety of issues relating to the character and objective of these maritime exercises. The

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purpose of this study is to examine the development and execution of the Freedom of Navigation program in the Black Sea.³

The Freedom of Navigation Program

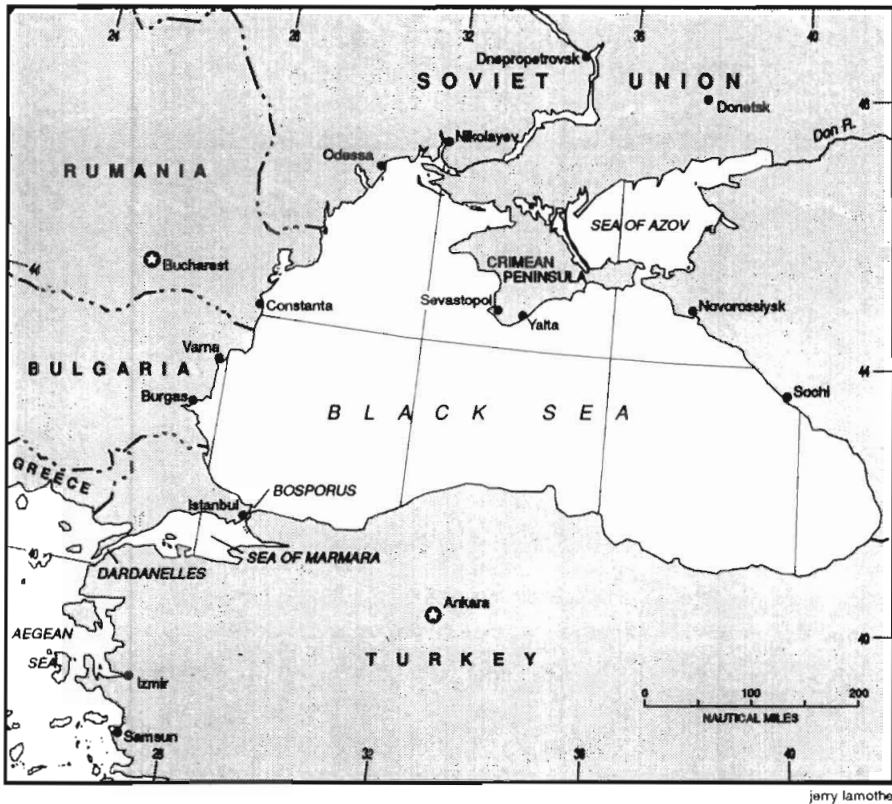
Following World War II, the United States began implementing an informal program to protect and promote the "rights and freedoms of navigation and overflight guaranteed to all nations under international law." Objectionable maritime claims worldwide included unrecognized assertions of historic waters, improperly drawn baselines for measuring maritime claims, excessive territorial sea demands imposing impermissible restrictions on the innocent passage of military and commercial vessels, and other maritime claims excessive or improper under international law.⁴ In 1979, the Carter administration formally established the Freedom of Navigation program, and it soon became an integral part of American foreign policy.

According to a 1979 communication from the Commander in Chief, U.S. Atlantic Command (CinCLant) to naval units of that fleet, the Freedom of Navigation program was initiated because the U.S. government was concerned that many countries were beginning to assert jurisdictional boundaries that far exceeded traditional claims.⁵ The FON program was a way of letting these countries know that the United States would not tolerate claims having an adverse impact on maritime freedom of movement. The memorandum noted that "in the future, there will be planned exercises, transits and overflights by Naval and Air Forces for the purposes of asserting U.S. rights in the face of excessive claims." U.S. maritime policy would now:

- Protest all territorial sea claims in excess of twelve nautical miles and some greater than three, especially those overlapping an international navigation strait.
- Protest all claims inhibiting navigation over waters that the United States viewed as a high seas corridor.
- Protest all claims requiring advance notification for warships or restricting warship passage in any way.
- Protest rules for "innocent passage" through the territorial sea which were substantially different from established provisions.
- Protest assertions of jurisdiction over navigation and overflight beyond the territorial sea.

The memorandum noted that if the United States did not protest what it believed to be illegal violations of its maritime rights, such inaction would imply ratification through acquiescence. It was subsequently noted by government officials that the FON program was specifically undertaken because diplomatic protests seemed ineffective.⁶

Thus, the Freedom of Navigation program was based on the legal position that a state may lose its rights under international law if it does not maintain a



consistent maritime policy and protest what it perceives to be excessive claims. For example, if a state were to assert an excessive maritime claim and the United States avoided operating its ships and aircraft in the disputed area, the U.S. inaction would eventually contribute to the formation of new customary international law. However, such a development can be averted successfully by states who continuously object to it.

The importance of maintaining a consistent policy was exemplified in 1982 during an evaluation of proposed FON operations that were to be conducted from 1 October 1982 through 31 March 1983. In reviewing the proposed navigation and overflight program that was to be conducted in the Black Sea, Rear Admiral S.H. Packer, acting Deputy Chief of Naval Operations, argued that in order to maintain a uniform policy the United States should not challenge Bulgaria's excessive maritime claims unless it challenged the Soviet Union's as well.⁷ According to Admiral Packer, the Navy firmly adhered to the view that a challenge to Bulgaria's warship notification regime without challenging the identical Soviet claim in the Black Sea would be counterproductive and undermine the appearance of U.S. resolve in the face of illegal initiatives. Such passivity would suggest reluctance to challenge the illegal maritime arrogations

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of powerful adversaries, which in turn could well be construed as acquiescence to such claims. Admiral Packer noted that "although the Navy is committed to the proposition that eventually all excessive maritime claims must be challenged, no challenge can be either considered or executed in isolation from all pertinent political, military, geographic or juridical factors." In this case, those factors substantially outweighed the benefit that might be gained by challenging Bulgaria's claims alone.

Perhaps the most authoritative statement on the Freedom of Navigation program was presented by President Ronald Reagan in 1983. In his evaluation of U.S. maritime policy, President Reagan stated that the "United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the [1982 Law of the Sea Convention]. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses."⁸

The influence of international law on U.S. maritime policy was reiterated in 1986 by the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, John Negroponte, when he noted that the "exercise of rights—the freedom to navigate on the world's oceans—is not meant to be a provocative act. Rather, in the framework of customary international law, it is a legitimate, peaceful assertion of a legal position and nothing more. If the United States and other maritime states do not assert international rights in the face of claims by others that do not conform with the present status of the law, they will be said to acquiesce in those claims to their disadvantage. What is particularly difficult in this situation is to understand that the more aggressive and unreasonable and provocative and threatening a claim may be, the more important it is to exercise one's rights in the face of the claim. The world community can't allow itself to be coerced—coerced into lethargy in the protection of the freedom of the seas."⁹

Freedom of Navigation Challenges

The Freedom of Navigation program combines both diplomatic and operational challenges to objectionable maritime claims. Under the program, the United States undertakes diplomatic action at several levels to preserve its rights under international law. It conducts bilateral consultations with many coastal states, stressing the need for all states to adhere to the rules and practices reflected in the 1982 United Nations Convention on the Law of the Sea (1982 LOS Convention). When appropriate, the State Department files a formal diplomatic protest addressing specific claims.¹⁰ Since 1948, the United States has diplomatically

protested over 150 excessive claims, including more than 110 since the FON program began in 1979.¹¹

In conjunction with diplomatic action, the Defense Department conducts operational challenges to objectionable claims. In the State Department view, operational assertions tangibly manifest U.S. determination not to acquiesce in excessive maritime demands by other countries. Operational challenges are conducted under strict regulation; peacetime rules of engagement are applicable throughout FON operations. In particularly sensitive cases, approval must be received from the Joint Chiefs of Staff or the president. Since 1979, the U.S. military has operationally protested the objectionable claims of over thirty-five states at the rate of approximately thirty or forty per year.¹²

The Black Sea Challenges

Though the FON program was implemented worldwide, confrontations with the Soviet Union produced some of the most contentious incidents. According to the Pentagon, the United States has conducted maritime operations in the Black Sea since 1960, and by the 1980s American warships were passing through the Turkish straits from the Mediterranean into the Black Sea two or three times a year to "show the flag" and to exercise the right of innocent passage in the territorial seas of littoral states.¹³

The presence of U.S. warships in the Black Sea served three purposes. First, the United States sent warships through the Turkish straits to uphold its rights under the 1936 Montreux Convention.¹⁴ According to a U.S. government official, "The Dardanelles and the Bosphorus form an international waterway. Passage is covered by the 1936 Montreux Convention. If you don't periodically reaffirm your rights you find that they're hard to revive."¹⁵ Second, the U.S. conducted Freedom of Navigation exercises in the Black Sea to affirm the right of innocent passage in Soviet territorial waters. Third, naval operations in the Black Sea demonstrated that waters outside territorial seas are international waters, where every state enjoys the high-seas freedoms of navigation and overflight.

The Soviet Union considered U.S. operations in the Black Sea unacceptable. Thus, the Soviets routinely dispatched their naval vessels and aircraft to monitor U.S. warships there. Specifically, the Soviets criticized U.S. operations on three grounds. First, the Soviets claimed that the American maneuvers violated the Montreux Convention because the caliber of the U.S. antisubmarine rocket launcher (Asroc) exceeded the 203mm Convention limit.¹⁶ The United States responded that Asroc was not a gun and was therefore not covered by the Convention.

Second, the Soviets criticized the maneuvers as both provocative and dangerous and asserted that there was no justification for the maintenance by

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the United States of a presence in the Black Sea.¹⁷ In 1968, *Izvestiya* commentator A. Sharifov noted that "the provocative visit by American ships to the Black Sea is aimed at troubling the clear waters of the good neighbor relations of the Black Sea countries."¹⁸ In the 1980s, the Soviets criticized Freedom of Navigation exercises in the Black Sea as an attempt to undermine improving Soviet-American relations.

Third, the Soviet Union protested U.S. operations in Soviet territorial waters because they violated Soviet maritime regulations. Since World War II the Soviet position on innocent passage in their territorial sea had been to require prior notification and authorization for warship transit. For example, the Soviet Union entered a reservation to the 1958 Convention on the Territorial Sea and the Contiguous Zone that declared that the coastal state "has the right to establish

"The FON program was a way of letting these countries know that the United States would not tolerate claims having an adverse impact on maritime freedom of movement."

a procedure of authorization for the passage of foreign warships through its territorial waters."¹⁹ Subsequently the Soviets established authorization procedures in their 1960 state border regulations.

Although the Soviets appeared to relax their position on innocent passage during the UNCLOS III negotiations, they eventually promulgated internal legislation that significantly restricted the right of innocent passage. On 28 April 1983 the Soviet Council of Ministers enacted the "Rules for Navigation and Sojourn of Foreign Warships in the Territorial Waters and Internal Waters and Ports of the U.S.S.R."²⁰ The Rules limited the transit of foreign warships through the territorial waters of the Soviet Union. Specifically, the Soviet regulations stated that innocent passage through Soviet territorial waters was to be permitted only along routes ordinarily used for international navigation. The Rules set out "traffic separation schemes" through which warships could travel in the Baltic Sea, the Sea of Okhotsk, and the Sea of Japan.²¹ There were no routes available for innocent passage in the Black Sea.

Freedom of Navigation operations in the Black Sea resulted in numerous confrontations between U.S. and Soviet forces. In fact, the Soviet response to the U.S. presence in the Black Sea gradually developed from one of diplomatic protest to armed response.

• On 9 December 1968, the destroyers USS *Dyess* and *Turner* of the Sixth Fleet sailed into the Black Sea, where they cruised for three days off the coasts of Turkey and the Soviet Union, closely shadowed by Soviet vessels. The Soviets charged that the maneuvers were a "provocative sortie"; *Pravda* asked, "Why do the Americans need to take such a stroll in the Black Sea?"²²

- In August 1979, as the destroyers USS *Caron* and *Farragut* were conducting "show the flag" maneuvers in the Black Sea, Soviet warplanes staged more than thirty mock missile attacks against them. According to Pentagon officials, the Soviets sent out a variety of bombers, including the modern, supersonic Tu-22M Backfire, to join reconnaissance planes in tracking the U.S. destroyers after they sailed into the Black Sea on 1 August.²³

- On 18 February 1984, the destroyer USS *David R. Ray* was conducting FON exercises in the Black Sea near Novorossiysk when Soviet aircraft fired cannon rounds into the ship's wake and a Soviet helicopter taking photographs of the destroyer swooped within thirty feet of its deck.²⁴ U.S. officials considered the Soviet action a violation of the spirit of the Incidents at Sea agreement.

Given the escalation taking place in the Black Sea, it was evident that the United States and the Soviet Union were rapidly approaching a confrontation.

On 10 March 1986, the guided missile cruiser USS *Yorktown* and the destroyer *Caron* entered the Black Sea.²⁵ At 11:11 A.M. on 13 March the *Yorktown* and *Caron* entered Soviet territorial waters near the southern Crimean Peninsula and passed within six miles of the Soviet coast, where they were soon confronted by a Soviet warship. The commander of the Soviet frigate *Ladnyi* notified the U.S. warships that they had violated the territorial waters of the Soviet Union and requested that they depart immediately. The U.S. vessels acknowledged receipt of the warning but did not change course. The Soviet command placed its Black Sea air and naval forces on combat readiness and dispatched border guard vessels and naval aircraft to intercept the U.S. warships.²⁶ The *Yorktown* and *Caron* stayed in Soviet territorial waters for approximately two hours and departed at 1:12 P.M.

The Soviet Union was quick to condemn the U.S. maneuvers. The U.S. chargé d'affaires, Richard Combs, was summoned to the Soviet foreign ministry in Moscow to receive the Soviet protest.²⁷ The Soviets stated that the American violation of its territorial waters "was of a demonstrative, defiant nature and pursued clearly provocative aims." According to the protest note, it was not the first time that U.S. warships had deliberately failed to comply with Soviet laws regarding its territorial waters and that "such violations can have serious consequences, the responsibility for which will be wholly on the U.S."²⁸ In fact, the commander in chief of the Soviet navy, Fleet Admiral V.N. Chernavin, suggested that the U.S. ships might have been attacked had they remained longer in Soviet waters.²⁹ Similarly, Georgi Arbatov, Director of the Institute of the U.S.A. and Canada, stated that the U.S. operations represented an attempt to test the Soviet Union and warned that Soviet forces would shoot the next time it happened.³⁰

Specifically, the Soviet Union based its protest to the American maneuvers on the notion that the right of innocent passage for warships was not absolute in Soviet territorial waters. According to Admiral Chernavin: "The innocent

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passage of foreign warships through the territorial waters of the USSR is permitted only in specially authorized coastal areas which have been announced by the Soviet Government [and] there are no such areas in the Black Sea off the coast of the Soviet Union."³¹ Thus, opposition to the U.S. exercises was apparently not based on any activities that the *Yorktown* or *Caron* may have undertaken during their transit through Soviet territorial waters. Rather, it was the act of crossing into Soviet waters and the subsequent presence in the area that constituted the alleged violation.³²

However, in its protest note the Soviet Union also charged that the U.S. actions were "a clear violation of Soviet borders for the purpose of conducting espionage."³³ Similarly, the Soviet news agency Novosti accused the U.S. of conducting a dangerous espionage operation against Soviet southern defenses using two naval ships and a military satellite.³⁴ Novosti asserted that the *Caron* and *Yorktown* entered Soviet territorial waters while an American reconnaissance satellite made three passes over the Black Sea.³⁵ It added that the approach of the U.S. vessels was intended to activate Soviet defenses and disclose their location and nature to the orbiting satellite.³⁶

According to *The New York Times*, the two American warships were equipped with electronic sensors and entered Soviet territorial waters not only to assert the right of innocent passage but also to test Soviet defenses and to gather intelligence.³⁷ The charges were based on the fact that both the *Caron* and the *Yorktown* had intelligence-gathering capacity.³⁸ The Navy has denied that the passage was in any way inconsistent with international law.

Pentagon officials admitted that the *Caron* had been loaded with additional equipment during the Black Sea operations. In fact, it was apparently standard procedure on such exercises to use electronic gear in order to determine whether new radars had been deployed on shore and to verify the state of readiness of Soviet forces.³⁹ According to one analyst, "What you want is to provoke a response." Soviet naval units operated with shore-based aircraft and submarines; collecting data on how these forces coordinated and deployed was a major American intelligence goal.

If while in the Soviet territorial sea the *Yorktown* and *Caron* were engaged in collection of information or any other activity not having a direct bearing on passage, it would be in violation of the 1982 LOS Convention provisions relating to innocent passage. According to Article 19(1), passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal state. In addition, Article 19(2)(c) states that "any act aimed at collecting information to the prejudice of the defence or security of the coastal State" is not considered innocent passage. Thus, a transit of the territorial sea undertaken expressly to test coastal state defenses, even passively, would fall under the 19(2)(c) prohibition. Such activity would also fall under the Article 19(2)(1) prohibition on "any other activity not having a direct bearing on passage."

In response to the Soviet charges, the United States asserted that the entry of the warships into Soviet waters "was simply an exercise of the right of innocent passage."⁴⁰ White House spokesman Edward Djerejian added that the maneuvers were routine and not intended to be provocative or defiant.⁴¹ The Department of State released a statement emphasizing that the purpose of the

"Given the escalation taking place in the Black Sea, it was evident that the United States and the Soviet Union were rapidly approaching a confrontation."

Freedom of Navigation program was to uphold the exercise and preservation of navigation and overflight rights and freedoms around the world. The statement noted that in fulfillment of the objectives of that program, U.S. ships and aircraft exercised rights and freedoms under international law off the coasts of many countries.⁴²

It is likely that the *Yorktown* and *Caron* were conducting intelligence gathering operations during their high seas transit off the coast of the Soviet Union; this would be permissible under international law. While the warships may have ceased active intelligence gathering operations during their passage through the Soviet territorial sea, they probably continued to monitor Soviet activity through their defensive collection systems (e.g., radar and sonar).

In February 1988 a more serious incident occurred between U.S. and Soviet naval forces in the Black Sea. On 10 February, two ships, again the *Caron* and *Yorktown*, entered the Black Sea. The U.S. warships were soon approached by three Soviet vessels, a Krivak-class frigate, a Mirka-class frigate, and a smaller intelligence gathering ship.⁴³ The Soviet vessels shadowed the U.S. warships throughout their Black Sea transit.

On 12 February, the *Caron* and *Yorktown* entered Soviet territorial waters near Sevastopol and headed eastward, skirting the Crimean coast.⁴⁴ Within minutes, the U.S. warships were intercepted by additional Soviet vessels. The *Caron* was contacted by the Mirka-class frigate *SKR-6*. Three minutes later, the *Yorktown* was approached by the Krivak-class frigate *Bezzavetnyi*.

The *Caron* transmitted the following to CincUSNavEur at 11:20 A.M. Greenwich ("Z") time, or 1:20 P.M. local, from 44° 10 min. north latitude and 34° 39 min. east longitude: "While conducting FON . . . track south of Crimean peninsula at 0746Z [9:46 A.M. local] 12 February 1988 *Caron* was informed on channel 16 VHF by Krivak-I FFG 811, 'Soviet ships have orders to prevent violation of territorial waters, extreme measure is to strike your ship with one of ours.' *Caron's* reply was 'I am engaged in innocent passage consistent with international law.' *Caron* was located twelve nautical miles from the Soviet land mass. *Caron* continued on [planned track] and at 0802Z [10:02 A.M. local] at 44° 15.2 min. north latitude and 33° 35.4 min. east longitude, 10.5 nautical miles from the

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coast, Mirka FFL 824 contacted *Caron's* port side aft at frame 466 [about sixty feet from the stern]. There was no damage to *Caron* other than superficial scraping of paint and no personnel injuries. *Caron* continued transit and exited territorial waters at 0950Z [11:50 A.M.] 12 February 1988 without further incident. Closest point of approach to the Crimean peninsula was 7.5 nautical miles at 0830Z [10:30 A.M.]. Data photos and video tape have been collected and will be forwarded in accordance with applicable instructions."⁴⁵

The *Yorktown* sent the following message: "While conducting transit south of Crimean peninsula (closest point of approach 10.6 nautical miles from Soviet land mass) *Yorktown* was contacted at 0756Z [9:56] 12 February 1988 by Krivak 0811 via channel 16 . . . and told to leave Soviet territorial waters or 'our ship is going to strike on yours.' Krivak 0811 then came alongside *Yorktown's* port side at 0803Z [10:03] at a distance of less than fifty feet and subsequently shouldered *Yorktown* by turning into ship. Krivak 0811 starboard anchor was torn away and *Yorktown* sustained minor hull damage. Two Harpoon [surface-to-surface missile] canisters (port launcher) sustained damage when Krivak bullnose [forwardmost extremity of the bow] passed down port quarter. Krivak 0811 then cleared to port and took station 300 yards off *Yorktown* port beam. At 0805Z [10:05] Krivak 0811 again contacted *Yorktown* via channel 16 and stated 'We will strike you as before if you do not clear our waters.' This transmission was not acknowledged. Krivak 0811 maintained station off port beam at 300 yards. *Yorktown* continued transit and exited territorial waters at 0926Z [11:26] without further incident."⁴⁶

Interestingly, the Soviet version of the incident downplayed the severity of the collision. Interviews with Soviet officers aboard the *Bezzavetnyi* produced these comments: "There was no thought of using weapons. It was the same with Lieutenant Commander Petrov on board the *SKR-6*. . . . To be honest, no one in the command center [i.e., on the bridge] put on his lifejacket, although the order had been given. . . . Many members of the crew of *Yorktown* were on the upper deck, smiling and waving, taking pictures of us with cameras and videocameras. And the commanding officer of *Yorktown*, for example, appeared on the bridge in parade uniform. In a word, the Americans behaved as if they were participating in a show for entertainment."⁴⁷

Following the incident, Undersecretary of State for Political Affairs Michael Armacost called in Soviet ambassador Yuri Dubinin to lodge the U.S. protest, which declared that the incident occurred as the *Caron* and *Yorktown* were lawfully exercising the right of innocent passage.⁴⁸ In testimony before the Senate Armed Services Committee, Secretary of Defense Frank C. Carlucci stated that the U.S. operations in the Black Sea involved a routine trial of the Freedom of Navigation program. "This particular test was not a test of their territorial waters, but of the right of innocent passage. We did such a test 2 years ago. Under international law, they had no right to attempt to impede our ships

or to use force. Force is only warranted when there is a threat, and these ships were clearly engaged in innocent passage. Our view is that unless you exercise the right of freedom of navigation, inevitably you lose it. You can always find reasons for not doing it at some particular point in time, but if we start backing off we will eventually lose some of the rights that are absolutely essential for our freedom of navigation."⁴⁹

The U.S. protest added that the United States was especially troubled by the fact that the incident was preceded by threats from the Soviet ships that they had been authorized to strike. These warnings made it clear the incident was deliberate.⁵⁰ In fact, according to the Central Intelligence Agency, "The reaction of Soviet naval forces to two U.S. warships conducting Freedom-of-Navigation operations in the Black Sea off the Crimea yesterday probably was decided at the highest political level. . . . This challenge to U.S. operations almost certainly was approved by the Soviet political leadership which may have reasoned that minor collisions would be viewed as a firm but measured response. The Soviets claim, and have sought to enforce, a 12-nautical-mile limit for their territorial waters. . . . The incident yesterday probably was designed to demonstrate a resolve to defend Soviet borders after such failures as the Cessna landing [by West German Mathias Rust] in Red Square last month. The naval leadership has come under criticism for its inability to prevent U.S. ships from operating in Soviet-claimed territorial waters in the Black Sea and in the Far East."⁵¹ Similarly, Secretary Carlucci noted that the Soviet vessels had received authorization to engage the United States and that the decision to bump the U.S. warships was a political one.⁵²

Soviet reaction to the incident was equally vociferous. The U.S. ambassador to the Soviet Union, Jack Matlock, was summoned to the foreign ministry to receive the formal Soviet protest. The protest note stated that "the American ships did not react to signals given by a Soviet border guard ship in advance to warn them of their approaching the state border of the U.S.S.R. and did not make suggested changes in their course."⁵³ It added that "a considerable distance inside Soviet territorial waters, the American naval ships executed dangerous maneuvering which led to a collision with Soviet naval ships. . . . Responsibility for the provocation which has been made, which led to the collision of the warships of the two nations, lies entirely and fully on the American side."⁵⁴

The bases for the Soviet protest were similar to those of their protest following the 1986 incident. First, the Soviets argued that the purpose of the FON operations was to undermine the "nascent process of improvements in Soviet-American relations and heightening international relations." In response, Secretary of State George Shultz noted that "the Freedom of Navigation Program protects basic freedoms of the seas and skies and is completely consistent with international law. If we are to retain our rights of navigation, we must periodically exercise those rights in areas subject to illegal and excessive territorial

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claims. These activities are fully coordinated within the Executive Branch and have the support of the President and his Cabinet. Given our sensitive political relationship with the Soviet Union, proposed operations in Soviet waters are subjected to particularly rigorous scrutiny, prior to their approval, and while they are underway. But we cannot exempt the Soviets from this program—to do so would accede to their illegal maritime claims. This we do not intend to do.”⁵⁵

Second, the Soviets accused the United States of conducting intelligence operations in Soviet territorial waters. Although vehemently denied by the U.S. government, unidentified Pentagon officials stated that one purpose of the operations was to collect intelligence information on Soviet defenses.⁵⁶ Interestingly, the following testimony before the Senate Armed Services Committee by Admiral William J. Crowe, then Chairman of the Joint Chiefs of Staff, and by Secretary Carlucci suggests that U.S. policy permitted some form of intelligence collection within the territorial sea:

Chairman Nunn: Secretary Carlucci, following Senator [Dan] Quayle's question on that right of innocent passage, I assume that we acknowledge that right of ships in our territorial waters, is that correct?

Secretary Carlucci: That is correct.

Nunn: So we are not asking the Soviet Union to do anything we do not do ourselves?

Carlucci: Absolutely not. As you are well aware, they have intelligence collection ships sitting just three miles outside our shores, just outside what we claim is territorial waters. In fairness to the Soviets, they claim twelve miles.

Nunn: What about the intelligence function? Can innocent passage include intelligence gathering under international law?

Carlucci: We had better ask the lawyers. All ships have intelligence capability on them, so I do not see how you could avoid it.

Nunn: In other words, if the Soviets pull intelligence ships up right next. . . .

Carlucci: The purpose of innocent passage has to be transit.

Nunn: It is not loitering?

Carlucci: I would not think you could go back and forth.

Nunn: Innocent passage is a means of getting from one place to the other?

Admiral Crowe: That is exactly right. If you gather intelligence in the process, all right. But you cannot do anything unusual in order to gather intelligence while you are engaged in innocent passage. In fact, you cannot do anything to operate out of the ordinary pattern except to go. That is it.

Nunn: So the point is it is reciprocal. We accord nations the same right that we demand, is that right?

Crowe: Yes, sir, we do.⁵⁷

Perhaps the most basic point of contention between the United States and the Soviet Union involved a fundamental disagreement over the right of the coastal state to limit innocent passage in the territorial sea.⁵⁸ According to the State Department, the 1982 LOS Convention limits the right of the coastal state

to impose restrictions on innocent passage. The English text of Article 22, paragraph 1, reads as follows: "The coastal State may, *where necessary having regard to the safety of navigation*, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships." (Emphasis added.) In other words, a state can impose sea lane restrictions

"A state failing to realize the importance of the law of the sea can find its sea power severely restricted or rendered useless."

that limit innocent passage only if they are based on navigational safety considerations. The State Department noted that the Soviet maritime regulations violated the provisions of the 1982 LOS Convention by completely prohibiting the exercise of innocent passage in the Black Sea.

However, the Soviets indicated that the Russian text of the Law of the Sea Convention did not limit the coastal state to such restrictions. A subsequent analysis conducted by the Department of State discovered that the Russian-language text of Article 22, paragraph 1, allows the coastal state to regulate the right of innocent passage whenever necessary.⁵⁹ The relevant Russian text, translated into English, reads as follows: "The coastal state, *in the event of necessity and with regard to the safety of navigation*, may require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes. . . ." ⁶⁰ (Emphasis added.)

Thus, a critical issue concerned the scope of Article 22, paragraph 1, of the Convention: specifically, does the 1982 LOS Convention allow coastal states to limit innocent passage only for navigational safety considerations, or may sea lane restrictions be imposed when necessary for other purposes, e.g., to protect national security?⁶¹

Following the February 1988 incident, the Soviet Union expressed a strong desire to reach some form of accommodation with the United States on the issue of innocent passage in Soviet territorial waters.⁶² Similarly, Secretary Carlucci suggested that the U.S. and the Soviet Union should try to set better guidelines for reducing dangerous incidents such as the confrontations in the Black Sea. According to Secretary Carlucci, "You could lay out some principles such as: you don't use violence, you don't ram ships, you don't fly too close to airplanes. We need to get one another's perspective . . . [and] find a way to deal with dangerous military activities and hear about their [Soviet] doctrine." As a result, the United States and Soviet Union began a series of bilateral consultations in an attempt to resolve the issues raised by the bumping incident. The negotiations involved two distinct matters: the avoidance of dangerous military activities, and the right of innocent passage.

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On 11 July 1988, Marshal Sergei F. Akhromeyev, then chief of the Soviet General Staff, and Admiral Crowe issued a joint statement in Washington indicating their intent to pursue policies and actions that would assist their respective armed forces in avoiding dangerous military activities.⁶³ They also announced plans to set up a joint military-to-military working group that would consider ways to avoid such unintended confrontations. It was stated that there was "no intention on their part to replace or derogate from existing agreements such as the 1972 Agreement on the Prevention of Incidents On and Over the High Seas or the 1947 Huebner-Malinin Agreement on military liaison missions."⁶⁴

On 1 June 1989, the Agreement on the Prevention of Dangerous Military Activities was signed in Moscow by Admiral Crowe and Colonel General Mikhail Moiseyev, newly appointed chief of the General Staff. According to the Agreement, the parties were "guided by generally recognized principles and rules of international law."⁶⁵ The document noted that both sides were convinced of the need to prevent dangerous military activities and thereby reduce the possibility of incidents arising between their armed forces.

The Agreement, which took effect on 1 January 1990, identified the following activities of personnel and equipment of armed forces, when operating in proximity to the personnel and equipment of the armed forces of the other party during peacetime, as dangerous:

- Entry by personnel and equipment of the armed forces of one party into the national territory of the other owing to circumstances brought about by *force majeure* or as a result of unintentional actions by such personnel.
- Using a laser in such a manner that its radiation could cause harm to personnel or damage to equipment of the armed forces of the other party.
- Hampering the activities of the personnel and equipment of the armed forces of the other party in a "Special Caution Area" in a manner which could cause harm to personnel or damage to equipment.
- Interfering with command and control networks in a manner that could cause harm to personnel or damage to equipment of the armed forces of the other party.

In addition, the Agreement stated that the parties "shall exercise great caution and prudence while operating near the national territory of the other Party." It allowed the parties to designate the above-mentioned "Special Caution Areas" inside which military personnel must establish and maintain communications and undertake measures to prevent dangerous military activities. Finally, the Agreement provided for the establishment of a Joint Military Commission to ensure compliance with the Agreement and consider ways to ensure a higher level of safety.

Reaction to the Agreement was positive on both sides. Admiral Crowe was pleased that it had been negotiated by military professionals. Similarly, Major

General George Butler, chief of the American negotiating team, noted that the Agreement represented "a new level of trust" between the two nations' military and civilian leaders. The Soviet press agency Tass stated that the signing was "an unprecedented event which would have been inconceivable two years ago."⁶⁶

However, the application of the Agreement to U.S. Freedom of Navigation exercises was unclear despite its apparent relevance to FON operations. Article VIII of the Agreement stated, "This Agreement shall not affect the rights and obligations of the Parties under other international agreements and arrangements in force between the Parties, and the rights of individual or collective self-defense and of navigation and overflight, in accordance with international law. Consistent with the foregoing, the Parties shall implement the provisions of this Agreement, taking into account the sovereign interests of both Parties."⁶⁷ Moreover, supplemental Agreed Statements added, "As indicated in Article VIII . . . this Agreement does not affect rights of navigation under international law, including the right of warships to exercise innocent passage."⁶⁸ Since the two sides had differing views on the right of navigation and overflight through the territorial sea, Article VIII and the accompanying Agreed Statements would appear to have precluded application of the Agreement to such issues.

The issue of innocent passage was resolved in a separate series of negotiations that took place between U.S. State and Defense Department law-of-the-sea representatives and Soviet officials, including Yuri Rybakov, head of the treaty and legal division of the Ministry of Foreign Affairs. Throughout these discussions, the Soviet representatives emphasized that the Soviet Union desired a diplomatic solution to the issue of innocent passage. In fact, "Rybakov intimated that the ongoing bilateral LOS channel would be the best forum through which to achieve such a solution because of its demonstrated problem solving record and its non-polemic atmosphere." The State Department shared Rybakov's view "that the LOS bilateral consultative mechanism [had] proven itself useful in problem solving over the past two years and is the best forum in which to continue our mutual search for a satisfactory solution."⁶⁹ The negotiations were concluded in August 1989 when the U.S. and Soviet negotiators prepared a joint statement setting out a mutually acceptable interpretation of the rules of international law applying to innocent passage throughout the territorial sea.

On 23 September 1989 at Jackson Hole, Wyoming, Secretary of State James Baker and Soviet Foreign Minister Eduard Shevardnadze signed the Uniform Interpretation of Rules of International Law Governing Innocent Passage. According to the Joint Statement that accompanied the Uniform Interpretation, both governments recognized that the provisions of the 1982 LOS Convention relating to traditional uses of the oceans "generally constitute international law and practice and balance fairly the interests of all States."⁷⁰ Thus, the United States and the Soviet Union agreed to take the necessary steps to put their internal

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laws and regulations in conformance with their agreement. The Uniform Interpretation provided:

1. The relevant rules of international law governing innocent passage of ships in the territorial sea are stated in the 1982 United Nations Convention on the Law of the Sea (Convention of 1982), particularly in Part II, Section 3.

2. All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.

3. Article 19 of the Convention of 1982 sets out in paragraph 2 an exhaustive list of activities that would render passage not innocent. A ship passing through the territorial sea that does not engage in any of these activities is in innocent passage.

4. A coastal State which questions whether the particular passage of a ship through its territorial sea is innocent shall inform the ship of the reason why it questions the innocence of the passage, and provide the ship an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time.

5. Ships exercising the right of innocent passage shall comply with all laws and regulations of the coastal State adopted in conformity with relevant rules of international law as reflected in Articles 21, 22, 23 and 25 of the Convention of 1982. These include the laws and regulations requiring ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may prescribe where needed to protect safety of navigation. In areas where no such sea lanes or traffic separation schemes have been prescribed, ships nevertheless enjoy the right of innocent passage.

6. Such laws and regulations of the coastal State may not have the practical effect of denying or impairing the exercise of the right of innocent passage as set forth in Article 24 of the Convention of 1982.

7. If a warship engages in conduct which violates such laws or regulations or renders its passage not innocent and does not take corrective action upon request, the coastal State may require it to leave the territorial sea, as set forth in Article 30 of the Convention of 1982. In such cases the warship shall do so immediately.

8. Without prejudice to the exercise or rights of coastal and flag States, all differences which may arise regarding a particular case of passage of ships through the territorial sea shall be settled through diplomatic channels or other agreed means.⁷¹

On 28 September 1989, the State Department notified all U.S. diplomatic posts that since Soviet border regulations had been brought into conformity with the 1982 LOS Convention, the U.S. government had assured the Soviet Union that the United States had no reason or intention to exercise its right of innocent passage under the Freedom of Navigation program in the Soviet territorial sea.⁷² The State Department noted, however, that the warships of both countries retained the right to conduct innocent passage incidental to normal navigation in the territorial sea. Moreover, it added that the United States would continue to conduct routine operations in the Black Sea and that the U.S. retained its

right to exercise innocent passage in any territorial sea in the world. Nevertheless, after the signing of the Uniform Interpretation, there were no further incursions by U.S. warships into Soviet territorial waters in the Black Sea.⁷³

This review of the Freedom of Navigation program reveals that the Black Sea operations were successful on several levels. First, FON operations pushed the Soviet Union into formal negotiations on the right of innocent passage. According to the State Department, "the Soviets entered into a serious effort to reconcile our divergent views of the right of innocent passage only after the February 1988 Black Sea FON operation."⁷⁴ As a result of these negotiations, the Soviet Union amended its internal regulations and rescinded its strict limitations on innocent passage.

The long-term implications of the Black Sea FON operations are even more significant. They affirmed the provisions of the 1982 LOS Convention relating to the traditional uses of the oceans, and as a result maximized the freedom of maritime movement.

At perhaps a more fundamental level, this review of U.S. Freedom of Navigation operations in the Black Sea has shown a compelling relationship between law and strategy. On the one hand, the influence of international law on U.S. foreign policy has been significant. The Freedom of Navigation program was established as a direct result of the legal constraints potentially imposed by international law. A state failing to realize the importance of the law of the sea can find its sea power severely restricted or rendered useless. Commerce, for example, is affected when trade routes are swallowed up by expanding territorial claims. Transit along littorals may be restricted by wary nations asserting their territorial sovereignty; key choke points can be closed to both commercial and military vessels; other straits may be so highly regulated that they no longer serve the economic or military interests of the maritime state. Sea lines of communication could be interdicted, therefore, not by a hostile fleet but by the extension of coastal state sovereignty.

At the same time, the development of international law has been shaped and influenced by the diverse strategic concerns of the United States. Throughout its history, the United States has been aware of its heavy dependence on free and unimpeded passage through the world's oceans. America's geographic position, the location of its major allies, its dependence on international trade, and the importance of the oceans as sources of food, energy, and minerals provide a compelling rationale for this traditional reliance on the freedom of the seas.⁷⁵ This dynamic, whereby strategy dictates the formation and development of international law, is clearly evident in the Freedom of Navigation program—

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wherein the United States has closely guarded both navigation and overflight rights throughout the world's oceans under the rubric of the freedom of the seas.

Notes

1. Message from USS *Yorktown* to Commander in Chief United States Naval Forces Europe on 12 February 1988, declassified 16 January 1990. (Abbreviations expanded.)

The right of innocent passage was most recently codified in the Third United Nations Conference on the Law of the Sea (UNCLOS III), United Nations Convention on the Law of the Sea, A/CONF 62/122 (1982).

Article 17 of UNCLOS III provides that ships of all states enjoy the right of innocent passage through the territorial sea. Article 18 defines passage as navigation through the territorial sea for the purpose of either traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters, or proceeding to or from internal waters or a call at such roadstead or port facility. It adds that such passage must be continuous and expeditious. Passage is considered innocent so long as it is not prejudicial to the peace, good order, or security of the coastal state.

In order to distinguish between the final Convention and the U.N. negotiations which led to it, in this paper the actual instrument will be referred to as the "1982 LOS Convention" and the conference which produced it as "UNCLOS III."

2. Message from USS *Caron* to Commander in Chief United States Naval Forces Europe on 12 February 1988, declassified on 16 January 1990. (Slightly edited, abbreviations expanded.)

The US-USSR Agreement on the Prevention of Incidents On and Over the High Seas was signed in 1972. This navy-to-navy agreement (popularly referred to as the Incidents at Sea or IncSea agreement) attempted to minimize the potential for harassing actions and navigational "one-upsmanship" between U.S. and Soviet units in close proximity at sea. Although the agreement applied to warships and military aircraft operating on and over the high seas, it was understood to embrace such units operating in all international waters and international airspace. The IncSea agreement was amended in a 1973 protocol to extend certain provisions of the agreement to nonmilitary ships. See "Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents On and Over the High Seas," TIAS 7379, 23 UST 1168; Department of the Navy, Office of the Chief of Naval Operations (Washington: 1987), pp. 2-10, 2-11.

3. The United States also conducted Freedom of Navigation operations in the Black Sea in the waters off Rumania and Bulgaria.

4. Department of State, Bureau of Public Affairs, "U.S. Freedom of Navigation Program" (Washington: December 1988), p. 1.

5. Jack Dorsey, "U.S. To Challenge Sea Limits," *The Ledger Star* (Norfolk, Va.), 7 August 1979, p. 1; "U.S. Will Challenge Coastal Sea Claims That Exceed Three Miles," *The New York Times*, 10 August 1979, p. A1.

6. "U.S. Will Challenge," p. A1.

7. Memorandum from Rear Admiral S.H. Packer to the Director, Joint Staff dated 28 October 1982, declassified 17 January 1991.

8. President Ronald Reagan, *United States Oceans Policy*, 10 March 1983.

9. John Negroponte, "Who Will Protect Freedom of the Seas?" *Current Policy*, no. 855, 1986, p. 3.

10. *Ibid.*

11. J. Ashley Roach, "Excessive Maritime Claims," remarks prepared for delivery at a panel meeting of the American Society of International Law, 30 March 1990, p. 7.

12. "U.S. Freedom of Navigation Program," p. 2.

13. Department of the Navy message from the Office of Information to Commander in Chief Naval Forces Europe, London, 19 March 1986.

The United States also conducted Freedom of Navigation operations against the Soviet Union in Avacha Bay on the Kamchatka Peninsula, the Sea of Okhotsk, and the Sea of Japan.

This analysis should be compared with the outcome of what is known as the Vilkitsky Straits incident. In August 1967, two U.S. Coast Guard icebreakers were crossing the Arctic basin north of the Soviet Union, collecting oceanographic and other scientific data. Unable to find access through the ice, the vessels planned to transit through the twenty-two-mile-wide Vilkitsky Straits, above the Taimyr Peninsula at about 105° east longitude. On 27 August 1967, the Soviet Ministry of Foreign Affairs notified the American embassy in Moscow that the passage "would be a violation of Soviet frontiers" and that the straits constituted Soviet territorial waters. Though the State Department issued a strong protest, claiming that the passage could not be prohibited, the icebreakers were ordered not to pass through the straits. See Richard Ackley, "The Soviet Navy's Role in Foreign Policy," *Naval War College Review*, May 1972, pp. 53-55; and Donat Pharand, "Soviet

Union Warns United States Against Use of Northeast Passage," 62 *American Journal of International Law*, 1968, p. 927.

14. The Montreux Convention was signed in 1936 and concerns the regulation of transit through the Turkish straits of the Bosphorus and Dardanelles; under it, exclusive Turkish sovereignty over the straits was guaranteed. Complete freedom of transit and navigation was granted to merchant vessels. However, transit by warships was significantly restricted. See 173 LNTS 213; N. Ronzitti, *The Law of Naval Warfare* (Boston: Martinus Nijhoff, 1988), pp. 435-482.

15. Benjamin Welles, "While Keeping the Flag Flying," *The New York Times*, 15 December 1968, p. 3E.

16. Ackley, pp. 55-56.

17. According to Igor Belyayev of *Pravda*, "The waters of the Black Sea are joined with the Mediterranean through the Bosphorus and Dardanelles. The striving of the Soviet Union to protect its vital state interests in the region is completely natural and lawful." See Igor Belyayev, "International Review," *Pravda*, 7 December 1968; Ackley, p. 55.

18. A. Sharifov, "Provocateurs at Sea," *Izvestiya*, 8 December 1968.

19. W.E. Butler, "Innocent Passage and the 1982 Convention: The Influence of Soviet Law and Policy," 81 *American Journal of International Law*, 1987, p. 333.

20. See "Rules for Navigation and Sojourn of Foreign Warships in the Territorial and Internal Waters and Ports of the U.S.S.R.," 28 *International Legal Materials*, 1985, p. 1715, and Ronald Neubauer, "The Right of Innocent Passage for Warships in the Territorial Sea: A Response to the Soviet Union," *Naval War College Review*, Spring 1988, p. 52.

21. 24 *International Legal Materials*, 1985, pp. 1715-1717.

22. Welles, p. 3E.

23. "U.S. Ships Report Soviet Mock Attack," *The Los Angeles Times*, 11 August 1979, p. 5.

24. Rick Atkinson, "High Seas Diplomacy Continuing," *The Washington Post*, 27 July 1984, p. 1.

25. The *Caron* and *Yorktown* had earlier entered the Black Sea on 9 December 1985.

The *Yorktown* is a *Ticonderoga*-class cruiser equipped with Aegis, a computer-controlled, radar-directed defense system that transmits simultaneously in all directions and can track multiple targets, while selecting, aiming, and firing the weapons best suited to destroy each target. It can also engage an incoming missile while searching for and tracking additional missiles. The *Caron* is a *Spruance*-class destroyer.

Both the *Yorktown* and the *Caron* are capable of carrying nuclear weapons. The technology used by the *Caron* and *Yorktown* was considered so advanced that much of it was not even shared with U.S. allies. In fact, according to a Pentagon analyst, "Any effort to seize the *Caron* or the *Yorktown* and you'd see every U.S. or NATO fighter-bomber in the area hitting those Soviet ships. Nor would the navy captains go quietly. They'd broadside until they sank." See Jeffrey Richelson, *American Espionage and the Soviet Target* (New York: William Morrow, 1987), p. 165; Richard Sale, "Analysts Believe Soviet Ramming Orders Came From Moscow," UPI, 29 February 1988; and Will Arkin, "Spying in the Black Sea," *Bulletin of the Atomic Scientists*, May 1988, p. 6.

26. According to Admiral Chernavin, "Taking into account the openly provocative nature of the actions of the U.S. ships, the command issued an order that the combat readiness of the strike forces of the fleet be enhanced. Ships and planes were promptly prepared for performing a combat mission." See Jack Redden, "Soviets Go on Alert in Presence of U.S. Ships," UPI, 22 March 1986; W.E. Butler, "Innocent Passage and the 1982 Convention: The Influence of Soviet Law and Policy," 81 *American Journal of International Law*, 1987, p. 344.

27. "To the Shores of Tripoli," *Time*, 31 March 1986, p. 26.

28. Department of the Navy message from the Office of Information to the Commander in Chief Naval Forces Europe, 19 March 1986, declassified 9 August 1989.

29. Central Intelligence Agency telegram to the Department of State, 13 February 1988, declassified 28 November 1989.

30. *Ibid.*

31. Butler, p. 344.

32. *Ibid.*, pp. 344-345.

33. "To the Shores of Tripoli," p. 26.

34. Ralph Boulton, "Soviet Agency Accuses U.S. of Espionage over Soviet Coast," Reuters, 2 April 1986.

35. UPI, 22 March 1986. It would appear that space-based surveillance support for Freedom of Navigation operations does exist. In 1988 the United States Space Command at Peterson Air Force Base notified the various commanders in chief that a separate message "encouraged CinCs to work together regarding Freedom of Navigation (FON) scheduling and operations. Request [that] CinCs planning for the operations [inform] USCINCPAC/J3 on any requests which may potentially involve space based surveillance support." Message from Headquarters U.S. SpaceCom, Peterson Air Force Base, Colo., to USCINCPAC, 7 June 1988, declassified 22 August 1989.

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36. The Crimean Peninsula accommodates sensitive Soviet southern radar defenses as well as submarine bases.

The electronic reconnaissance program has been in existence since 1962. The purpose of the program is to establish the location of radar systems and determine their physical characteristics. With such information, electronic countermeasures can be designed to jam or negate those systems. Generally, the first priority of electronic reconnaissance with respect to radars is to establish the location of the radars. Next, attention is turned to identifying the function of the radar (early warning, aircraft control, gun-laying, anti-aircraft, or active countermeasures). See Jeffrey Richelson, *American Espionage and the Soviet Target* (New York: William Morrow, 1987), p. 109.

Interestingly, the Soviets compared the use of satellites during the Black Sea operations with the 1983 downing of the Korean Airlines passenger jet. Moscow asserted that the Korean airliner had been on a pre-planned spying mission flown in conjunction with the electronic reconnaissance (or "Ferret") satellite. Novosti asserted that "this most recent use of the Ferret satellite in an outrageous provocation against the sovereignty and security of the Soviet Union will perhaps serve as a reminder of provocations staged not so long ago. . . . The outcome of some of these provocations was relatively harmless, while others spelled a tragic end for those who staged them." See Boulton.

37. Richard Halloran, "2 U.S. Ships Enter Soviet Waters off Crimea to Gather Intelligence," *The New York Times*, 19 March 1986, p. A1.

38. Since 1980 the *Caron* has been on at least twenty-four missions where her special equipment for collecting intelligence has been needed. For example, she has been involved in intelligence gathering off the coast of Nicaragua in 1982 and Lebanon in 1983-1984, and she played a part in the 1986 maneuvers in the Gulf of Sidra prior to the American raids on Tripoli. The *Caron* was the first U.S. Navy ship to arrive on station for Operation Urgent Fury against Grenada in 1983.

Against Soviet targets, the *Caron* has been engaged in intelligence gathering near several major Soviet naval bases, including Kaliningrad, Severomorsk, Sevastopol, and Polyarnyy. The *Caron* also provided surveillance of the Soviet Kiev aircraft carrier battle group in Operation Aggressive Knight in March 1980 and Operation Eagle Eye in July 1981. See Department of the Navy message from the Office of Information to the Commander in Chief Naval Forces Europe, 19 March 1986, declassified 9 August 1989; John Cushman, "2 Soviet Warships Reportedly Bump U.S. Navy Vessels," *The New York Times*, 13 February 1988, p. A1; and Arkin, p. 6.

39. "Soviet Ships Shadowed U.S. Vessels' Transit," *The Washington Post*, 20 March 1986, p. A33.

40. Department of the Navy message from the Office of Information to the Commander in Chief Naval Forces Europe, 19 March 1986, declassified 9 August 1989.

41. Halloran, p. A1.

42. Department of State Bulletin, May 1986, p. 79.

43. Department of State telegram from CincUSNavEur to Commander in Chief European Command (USCINCEUR), 12 February 1988, declassified 22 February 1991.

44. Sevastopol is the headquarters of the Soviet Black Sea Fleet.

45. Department of State Telegram from CincUSNavEur to USCINCEUR dated 12 February 1988, declassified 22 February 1991. (Slightly edited, abbreviations expanded.)

46. Message from the USS *Yorktown* to Commander in Chief United States Naval Forces Europe, 12 February 1988, declassified 16 January 1990. (Edited as for *Caron* message.)

47. Office of the Legal Adviser, Department of State, declassified 10 August 1989.

48. Similar protests were conducted by the Navy and the Defense Department. The naval protest was lodged pursuant to the Incidents at Sea (IncSea) Agreement. At the Defense Department, Secretary Carlucci stated that one of the issues he would like to discuss with Soviet Defense Minister Dmitri Yazov during their upcoming meeting in Switzerland the following month would be Soviet military practices that jeopardized American lives and property. See Department of State telegram, 13 February 1988, declassified 10 August 1989.

49. U.S. Congress, Senate, Committee on Armed Services, *Department of Defense Authorization for Appropriations for Fiscal Year 1989*, Hearings (Washington: U.S. Govt. Print. Off., 1988), pp. 97-98.

50. Department of State memorandum to Michael Armacost, 12 February 1988, declassified 10 August 1989.

51. Central Intelligence Agency telegram to the Department of State, 13 February 1988, declassified 28 November 1989.

52. Senate Armed Services Committee Hearings, p. 95.

53. Office of the Legal Adviser, Department of State, declassified 10 August 1989.

54. *Ibid.*

55. Letter from Secretary of State George Shultz to Senator Alan Cranston, 21 March 1988, declassified 5 June 1990.

56. Cushman, p. A1.

57. Senate Armed Services Committee Hearings, pp. 97–98.
58. At a Moscow news conference, Admiral Nikolai Markov, citing Soviet law, stated that the Soviet Union did not recognize the right of innocent passage through its territorial waters in the Black Sea.
59. Interestingly, of the six official languages into which the Law of the Sea Convention was translated, only the Arabic text was identical to the English; discrepancies with the English version existed in the Chinese, French, Russian, and Spanish texts. For example, the French text of Article 22(1) reads, in a literal translation: "The coastal State may, *when the security of navigation so dictates*. . . ." The Spanish text reads, "The coastal State may, *when necessary taking into account the safety of navigation*. . . ." Department of State memorandum, 12 September 1988, declassified 10 August 1989. (Emphasis added.)
60. *Ibid.*
61. Department of State memorandum, 31 August 1988, declassified 10 August 1989.
62. Action Memorandum to the Secretary of State, 5 September 1989, declassified 5 June 1990.
63. 28 *International Legal Materials*, 1989, p. 877.
64. The Huebner-Malinin agreement governed the operations of the U.S. military liaison mission in East Germany and of the Soviet mission in West Germany. See *International Legal Materials*, 1989, p. 877.
65. *Ibid.* p. 879.
66. Francis Clines, "U.S.-Soviet Accord Cuts Risk of War," *The New York Times*, 13 June 1989, p. A12.
67. 28 *International Legal Materials*, 1989, p. 885.
68. *Ibid.*, p. 895.
69. Telegram from Secretary of State to American Embassy, Moscow, 1 August 1988, declassified 5 June 1990.
70. 28 *International Legal Materials*, 1989, p. 1445. The Joint Statement acknowledged the U.S. position that the 1982 LOS Convention constitutes international law and practice only as to traditional uses of the oceans. By limiting its recognition on the applicability of the Convention, the United States apparently maintained its objections to those provisions in the Convention relating to unconventional uses of the oceans, namely, the deep-sea mining provisions.
71. 28 *International Legal Materials*, 1989, pp. 1444, 1445–1447. The flag state is the country whose flag the vessel is flying.
72. Specifically, Secretary Baker delivered a letter to Foreign Minister Shevardnadze which noted that "without prejudice to its rights to exercise innocent passage, the United States of America has no intentions to conduct innocent passage with its warships in the territorial sea of the Union of the Soviet Socialist Republics in the Black Sea." Department of State CircTel no. 311861, 28 September 1989; Eugene Carroll, "Peace Comes to the Black Sea," *Arms Control Today*, July/August 1990, p. 22.
73. International Law Division of the Soviet Ministry of Foreign Affairs, 11 July 1990.
74. Action Memorandum to the Secretary of State dated 5 September 1989, declassified 5 June 1990.
75. Scott Truver, "The Law of the Sea and the Military Use of the Oceans in 2010," *Louisiana Law Review*, no. 45, 1985, p. 1227.

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"Well, here we are, the French and ourselves, at war with Russia, in order to protect Turkey. Ve-ry good. What shall we do, then? Better attack Russia, eh? H'm, yes." (Pause). "Big place, ain't it?"

George MacDonald Fraser
Flashman at the Charge